UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	5:03-CV-01 13-1
	)	Civil No. _____
v.	)	
	)	
MORRIS JAMES, SR., and NATIONAL RESOURCE INFORMATION CENTER, INC., also dba NRIC, INC.	)	
	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF UNITED STATES' MOTION FOR PRELIMINARY INJUNCTION

Morris James, his agents, and the employees of National Resource Information Center, Inc. (NRIC) promote a fabricated federal-income-tax credit or refund that defendants assert is available to African Americans as "black heritage taxes," "40 acres and a mule," or as compensation or reparations for slavery, segregation, treatment as second-class citizens, separate-but-equal laws, or other comparable grounds. Defendants also prepare federal income tax returns and amended returns that claim a refund of $43,209 based on this bogus credit.

The Government requests that the Court issue a preliminary injunction under I.R.C. §§ 7407, 7408, and 7402(a) to prevent James, NRIC and anyone acting in concert with them from engaging in this illegal conduct while this case is pending. Each of these statutes provides an independent basis for entering the requested preliminary injunction.

Question Presented

Morris James and NRIC promote a bogus credit or refund for African Americans, and NRIC workers have prepared many tax returns claiming such a credit in the amount of $43,209.

The Internal Revenue Code authorizes courts to issue injunctions against those who promote or aid and abet abusive tax schemes, prepare tax returns that take frivolous positions, or impede the enforcement of the tax laws. Should James and NRIC be preliminarily enjoined from promoting such a bogus credit and from preparing returns or amended returns claiming such a credit or refund during the pendency of this lawsuit?

I. Statement of Facts.

Defendant Morris James promotes a tax scam through a company he calls the National Resource Information Center, Inc. (NRIC). *See* Declaration of Mark Dejournett (Dejournett decl.). James, independently and through NRIC, has promoted a bogus refundable tax credit or refund that he tells his customers is available to African Americans as reparations for slavery. *Id.* No such credit or refund is available, and James is aware of this fact. *See* Dejournett decl. ¶ 15. Yet he and his agents and employees have convinced many customers to sign a blank federal income-tax-return and turn it over to NRIC, along with a cashier's check or money order in the amount of $50, with the promise that NRIC would file a slavery reparations claim on their behalf with the IRS. *Id.* at ¶ 12, Exh. 2. At least 6,358 people paid James and NRIC to prepare Forms 1040A on their behalf claiming a credit or refund based on slavery reparations. *Id.* at ¶ 21. The IRS initiated an investigation of James and NRIC when it discovered that NRIC was preparing tax returns based on the false and fraudulent position that taxpayers of African-American descent are entitled to a refundable income-tax credit titled "black heritage tax," "40 acres and a mule," or as compensation or reparations for slavery, segregation or other comparable grounds. *Id.* at ¶ 3.

Morris James admits that he has not filed federal-income-tax returns for the years 1993

through 2001, with one important exception: He filed a return for 1999 reporting no taxable income but claiming a $43,209 refund based on a "slavery reparation credit." *Id.* at ¶ 8. The return included an IRS Form 2439 (Notice to Shareholder of Undistributed Long-Term Capital Gains) showing "tax paid" in the amount of $43,209 despite no related income. *Id.* Ray Coleman (who was eventually hired to prepare returns for NRIC) prepared James' 1999 return. *Id.* at ¶ 9. James claims that his request for refund was legitimate, but fails to explain why Form 2439 was used or why he did not follow up with the Internal Revenue Service when it did not pay the claim. *Id.* at ¶ 8.

James founded NRIC, *Id.* at ¶ 10, and hired approximately twenty-five employees to assist with promoting the tax scam and filing the false returns. *Id.* at ¶ 17. James promoted the slavery reparations tax scam at meetings held in churches, where he made false and fraudulent representations that persons of African-American descent are entitled to receive a refundable credit on their tax return as compensation for slavery. *Id.* At these meetings James solicited orders for NRIC "tax reparation packets," *Id.* at ¶ 16, which included an information sheet and a blank Form 1040(A). *See* Dejournett Decl. ¶ 20. The slavery reparations credit has also been promoted on the NRIC website at www.mynric.com, and by NRIC telemarketers following written scripts developed by James. Dejournett Decl. ¶ 16.

NRIC's "tax reparation packet" instructed the customers to provide their names, addresses, telephone numbers and social security numbers; sign and date a blank Form 1040(A); and the information back to NRIC with a money order or cashier's check in the amount of $50 made payable to NRIC, Inc. Dejournett Exh. 2. The slavery reparation information sheets state that NRIC will "complete the 1040A and forward it to the IRS." *Id.*

Defendants' tax-preparation activities consist solely of preparing tax returns claiming a fabricated tax credit for slavery reparations. Dejournett Decl. ¶ 17. NRIC prepares no other tax returns. *Id.*

A search warrant was executed on the premises of NRIC in May of 2002. *Id.* at ¶ 18. On August 8, 2002, the IRS sent a letter to Morris James, notifying him that the IRS had begun an investigation to determine whether he should be enjoined and/or penalized for his activity, and requesting a meeting. *Id.* at ¶ 4. Revenue Agent Mark Dejournett met with James on September 11, 2002, to give James an opportunity to present facts and legal argument as to why penalties should not be assessed against him pursuant to IRC §§ 6694, 6695, 6700 and 6701, and why an injunction should not be sought against him pursuant to IRC §§ 7402, 7407 and 7408. Dejournett decl. ¶ 5.

At this meeting James stated that he became aware of the slavery reparation movement through media releases and discussions with numerous individuals who had allegedly received payments. *Id.* at ¶ 11. James claims that NRIC consulted with one "Assante Ali" from the law offices of "Ali, Dey, Bey, & El Associates" in New Jersey to verify the validity of the "slavery reparation credit," and that Ali allegedly told him that his tax positions and promotional packages were legal. *Id.* at ¶ 13. James admits that neither he nor any employee of NRIC consulted the IRS to get the official position on the slavery reparation tax credit, nor did they attempt any further research to verify it. *Id.* at ¶ 14. He also admitted to knowledge of IRS media releases warning taxpayers that no tax benefit is available as compensation for slavery, and to ignoring those media releases. *Id.* at ¶ 15. The United States has been unable to locate a law firm by the name of "Ali, Dey, Bey, & El Associates, or a lawyer by the name of Assante Ali. Dejournett

Decl. ¶ 24.

In February of 2002, James set up a "membership program" in response to the many claim denial letters sent by the IRS to NRIC customers. *Id.* at ¶ 22. James told customers that the membership program's purpose was to fund a class action suit against the United States to compel the payment of slavery reparation claims and other discrimination-related claims, and that members would be included in the class. Dejournett decl. ¶ 22. These memberships, for which defendants charged $75-$250, also included access to the slavery reparations tax credit.

Defendants sold at least 6,358 tax information packages. *Id.* at ¶ 21. An examination of a sampling of seventy-one of the 6,358 NRIC customer fact sheets seized during the execution of the search warrant confirmed that the IRS processed frivolous returns for all seventy-one NRIC customers examined. *Id.* at ¶ 19-20.

Defendants did not stop selling tax packages even after James became aware that the IRS was rejecting NRIC's customers' slavery reparations claims. *Id.* at ¶ 23. James intends to continue promoting the slavery reparations tax credit. *Id.* at 24.

Frivolous documents containing fabricated tax credits, such as those defendants prepared, create a substantial administrative burden on the IRS to process. *See* Rae Thurell declaration (Thurell Decl.). If refunds are erroneously made and later detected, the Government will either lose those funds or have to expend substantial resources to recover them. Thurell decl. ¶¶ 13-14. Based on past experience, the IRS cannot recover all of the erroneous refunds issued, and will suffer permanent revenue losses if defendants are allowed to continue filing income-tax returns with frivolous reparation claims. *Id.*

II. Standards for Preliminary Injunction.

Where an injunction is expressly authorized by statute, the Court should look to whether the Government has satisfied the requirements for a statutory injunction.[1] The United States need not show irreparable harm for a statutory injunction to issue because such harm is presumed by the "very fact that the statute has been violated."[2]

Further, the existence of alternative criminal or other legal remedies does not preclude the issuance of a statutory injunction.[3] In enacting Sections 7407 and 7408, Congress has already determined that existing legal remedies are insufficient.[4] Indeed, Congress viewed injunctions as the most effective way to enforce penalties against promoters of abusive tax schemes.[5] By obtaining an injunction against the promoter, the Government can avoid a drain on IRS resources, a multiplicity of suits on the same issue against individual taxpayers, and piecemeal litigation.[6] Otherwise, the Government would be unable to effectively combat the abusive position and taxpayers would be encouraged to violate the tax laws because of "the doubtless accurate belief that the IRS would be unable to detect and pursue every taxpayer in violation[.]"[7]

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[1] *See, e.g., United States v. Buttorff,* 761 F.2d 1056, 1063 (5th Cir. 1985). *See also United States v. Estate Preservation Servs.,* 202 F.3d 1093, 1098 (9th Cir. 2000); *Kemp v. Peterson,* 940 F.2d 110, 112-13 (4th Cir. 1991); *United States v. Kaun,* 827 F.2d 1144, 1148 (7th Cir. 1987).

[2] *United States v. Hayes Int'l Corp.,* 415 F.2d 1038, 1045 (5th Cir. 1969).

[3] *Buttorff,* 761 F.2d at 1063-64.

[4] *See Id.* at 1063-64.

[5] S.Rep. No. 97-494(I), at 268 (1982), *reprinted in* 1982 U.S.C.C.A.N. 781, 1016.

[6] *Buttorff,* 761 F.2d at 1064 .

[7] *Id.*

In addition, the Government represents the public interest. Consequently, the Court's equitable powers "*assume an even broader and more flexible character* than when only a private controversy is at stake."[8] Furthermore, procedures for issuing a preliminary injunction are customarily less formal and may be granted on evidence that is less complete than at a trial.[9]

III. The United States Is Entitled to a Preliminary Injunction Under I.R.C. §§ 7407, 7408, and 7402(a).

A preliminary injunction is appropriate under I.R.C. § 7407 because defendants are paid tax-return preparers who have engaged in activity subject to penalty under I.R.C. §§ 6694 and 6695. Defendants have violated I.R.C. § 6694 by preparing tax returns for compensation based on the unrealistic and frivolous position that taxpayers are entitled to a tax credit as reparations for slavery, even though Congress has enacted no such credit.

A preliminary injunction is appropriate under I.R.C. § 7408 because defendants have engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701. Defendants have violated § 6700 by organizing and participating in the sale of tax packages and membership packages that marketed false claims for tax credits on federal tax returns or amended returns that defendants prepared. Defendants have violated I.R.C. § 6701 by preparing tax returns knowing that they would be used to claim tax refunds and knowing that they would result in understatements of tax liability. Finally, a preliminary injunction is appropriate under I.R.C. § 7402(a) because an injunction prohibiting defendants from filing false tax returns claiming fabricated tax credits and from advertising the availability of fabricated tax credits, is necessary and appropriate for the

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[8] *FSLIC v. Dixon,* 835 F.2d 554, 562 (5th Cir. 1987) (*quoting Porter v. Warner Holding Co.,* 328 U.S. 395, 398 (1946)) (emphasis in original)).

[9] *FSLIC,* 835 F.2d at 558 (*quoting Univ. of Texas v. Comenisch,* 451 U.S. 390, 395 (1981)).

enforcement of the internal revenue laws.

IV. The Internal Revenue Code Does Not Provide a Credit for Reparations for Slavery, Segregation, or Treatment as a Second-Class Citizen. Consequently, Any Claim Based on Such a Credit Is Frivolous.

The Constitution grants to Congress, not to individual taxpayers, the power to tax and spend.[10] Congress determines what shall be taxed, who shall pay the tax, and what the tax shall be.[11] Thus, only Congress has the right to create deductions and credits for federal tax purposes: "It is a well established principle of tax law that deductions and credits are a matter of legislative grace, and unless Congress provides for a deduction or a credit in the law, it is not allowable."[12]

Moreover, courts may not deviate from application of the clear statutory provisions of the Internal Revenue Code.[13] To hold otherwise would seriously undermine the administration of the tax laws.[14] Accordingly, neither James, NRIC, nor their customers may arrogate Congress's power to determine the tax laws by granting themselves a fabricated tax credit. Because these claims have no basis in law, they are legally frivolous.

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[10] U.S. Const. art. I, § 8, cl. 1; *Lull v. Commissioner,* 602 F.2d 1166, 1172 (4th Cir. 1979) (attaching tax court opinions as appendix to circuit court's order), *cert. denied,* 444 U.S. 1014 (1980). *See also Graves v. Comm'r,* 579 F.2d 392, 393 (6th Cir. 1978), *cert. denied,* 440 U.S. 946 (1979).

[11] *United States v. Andra,* 923 F. Supp. 157, 159 (D. Idaho 1996).

[12] *Welch v. United States,* 750 F.2d 1101, 1106-07 (1st Cir. 1985) (*citing New Colonial Ice Co. v. Helvering,* 292 U.S. 435, 440 (1934)).

[13] *Supreme Investment Corp. v. United States,* 468 F.2d 370, 379 (5th Cir. 1972) ("Finally, we must remember that Congress, not the courts, bears the responsibility for establishing the rules of taxation.").

[14] *Blatt v. United States,* 830 F.Supp. 882, 888 (D. S.C. 1993), *aff'd,* 34 F.3d 252 (4th Cir. 1994). *See also Webb v. United States,* 66 F.3d 691, 694 (4th Cir. 1995), *cert. denied,* 519 U.S. 1148 (1997); *Chetkof v. United States,* 676 F.2d 984, 991 n. 13 (4th Cir. 1982).

Defendants' attempted arrogation of Congress's power is comparable to that of taxpayers who claimed deductions for "war taxes" to protest defense spending. Such "war tax" deductions are frivolous.[15] In *McKee v. United States*, the Fourth Circuit upheld the frivolous return penalty against two taxpayers–McKee and Gibbs–who claimed such deductions. *McKee* altered the "foreign tax credit" of her return to read "foreign war tax credit" and inserted a fabricated number. Gibbs gave herself a credit of 40 percent of her tax liability for what she identified as the "CMTC ESCROW ACCT[.]" She advised in an attached letter that she would deposit the refund into the "Conscience and Military Tax Campaign Escrow Account for a World Peace Tax Fund." The Fourth Circuit held that the test for frivolousness is an objective one "under which we must evaluate a taxpayer's position in terms of its legal underpinnings."[16] Consequently, neither McKee's nor Gibbs's sincere conscientious beliefs constituted a defense to the penalty.[17]

As with the "war tax" deduction, nothing in the Internal Revenue Code provides for tax credits or refunds as reparations for slavery, segregation, or alleged second-class citizenship. Nor does the Code provide for a "black inheritage [sic] tax" credit. Such claims have no basis in the Internal Revenue Code and are legally frivolous.

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[15] *See, e.g., McKee v. United States,* 781 F.2d 1043 (4th Cir.), *cert. denied,* 477 U.S. 905 (1986); *Welch,* 750 F.2d 1101; *Carey v. United States,* 601 F. Supp. 150 (E.D. Va. 1985); *Swords v. United States,* 1985 WL 6234 (N.D. N.Y. Mar. 23, 1985) (a copy of this case is submitted herewith).

[16] *McKee,* 781 at 1047 (adopting test in *Kahn v. United States,* 753 F.2d 1208, 1214 (3d Cir. 1985)).

[17] *Id.*

V. Defendants Should Be Enjoined under I.R.C. § 7407 Because They Acted as Tax Return Preparers and Advanced an Unrealistic and Frivolous Position.

The United States may obtain an injunction under I.R.C. § 7407 if it shows that:

1. James and NRIC are tax preparers; and

2. a. engaged in conduct subject to penalty under I.R.C. § 6694 (which penalizes a return preparer who prepares or submits a return containing an unrealistic position); or

   b. engaged in conduct subject to penalty under I.R.C. § 6695 (which penalizes the failure to sign returns or claims and the failure to furnish an identifying number); or

   c. guaranteed the payment of any tax refund or allowance of any tax credit; or

   d. engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws; and

3. an injunction is appropriate to prevent the recurrence of such conduct.

If defendants engaged in behavior identified in item 2 above continually or repeatedly and a more limited injunction prohibiting only the proscribed behavior would be insufficient to stop interference with the proper administration of the tax laws, then the Court can enjoin them from ever again acting as return preparers.[18] Defendants would then be prohibited from preparing any returns for compensation. On the other hand, continuous or repeated conduct need not be shown in order to prohibit defendants from further engaging in the proscribed conduct.[19]

a. Defendants are paid return preparers.

NRIC charges $50 per return for preparing tax returns claiming the fabricated tax credit

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[18] *See United States v. Bailey,* 789 F. Supp. 788, 812 (N.D. Tex. 1992).

[19] *See id.*

for slavery reparations.[20] James is the sole shareholder and president of NRIC[21] and is therefore responsible for all returns prepared by NRIC and by its agents or employees.[22]

b. Defendants violate I.R.C. § 6694 because they prepare returns based on the unrealistic and frivolous position that African-American taxpayers are entitled to a fabricated tax credit as reparations for slavery.

Section 6694 of the Internal Revenue Code imposes a penalty on a return preparer who prepares a claim for refund based on an unrealistic position. The following requirements must be met:

a. Any part of any understatement of liability with respect to any return or claim for refund is due to a position for which there was not a realistic possibility of being sustained on its merits,

b. any person who is an income tax return preparer with respect to such return or claim knew (or reasonably should have known) of such position, and

c. such position was not disclosed on the return as provided by statute or was frivolous.[23]

These conditions are satisfied in this case.

i. A claim for refund based on a fabricated tax credit as reparations for slavery is frivolous and has no realistic possibility of being sustained.

As stated above, only Congress can create deductions and credits. There is no credit for slavery reparations or any similar grounds. Accordingly, there is no possibility that defendants'

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[20] *See* Dejournett decl.Exh. 2.

[21] Dejournett decl. ¶ 7.

[22] *See Byrne v. Nezhat,* 261 F.3d 1075, 1105 (11th Cir. 2001) (holding that a corporation cannot disregard the law with impunity, agents of the corporation will be responsible for actions taken by the corporation).

[23] I.R.C. § 6694.

fabricated tax credit will be sustained on its merits.

ii. Defendants prepared the bogus tax returns claiming the fabricated tax credit.

Defendant James has admitted that NRIC is in the business of preparing tax returns claiming fabricated tax credits for slavery reparations, and the client information sheets seized pursuant to a search warrant executed on NRIC property indicate that NRIC received at least 6,358 signed Forms 1040 from taxpayers expecting NRIC to file for a slavery reparations credit on their behalf. Defendants filed an unknown number of these returns with the IRS.

iii. The fabricated tax credit for treatment as reparations for slavery is frivolous.

As noted above, no provision of the Internal Revenue Code provides for a tax credit as reparations for slavery. Attempts by taxpayers to fabricate tax credits or to exempt themselves from the operation of the Internal Revenue Code are frivolous and routinely rejected by the Courts.

c. An injunction is appropriate to prevent recurrence of defendants' misconduct.

A preliminary injunction is necessary to prevent recurrence of defendants' illegal conduct. When addressing likelihood of recurrence, courts have looked to the following factors: 1) the gravity of the harm caused by the offense, 2) the extent of the defendant's participation and his degree of scienter, 3) the isolated or recurrent nature of the infraction and the likelihood that the defendant's customary business activities might again involve him in such transactions, 4) the defendant's recognition of his own culpability, and 5) the sincerity of his assurances against

future violations.[24] The Eleventh Circuit has also considered the likelihood that the defendant's occupation will present opportunities for future violations.[25]

These factors weigh entirely in favor of granting a preliminary injunction. First, defendants' activities have caused the Government substantial harm. IRS employees have had to devote substantial resources attempting to locate and process the frivolous returns and other documents that defendants prepare, to take steps to prevent erroneous tax refunds, to recover erroneous refunds that are made, and to assess and collect proper tax liabilities and penalties.[26] Moreover, defendants' activities expose the customers to the $500 frivolous return penalty under I.R.C. § 6702.

Second, defendants knowingly prepared or assisted in preparing the returns containing their fabricated tax credit. Morris James stated that he knew of IRS public statements that there is no tax credit available as a reparation for slavery. Additionally, James never questioned or challenged the denial of his own 1999 frivolous claim for refund as payment for reparations. Third, defendants' conduct is recurring; James refuses to stop promoting this fabricated credit. Finally, as long as defendants prepare tax returns, they will be preparing false claims for reparations. Defendants only got into the tax-preparation business to file such returns and have no legitimate tax-preparation business.

The above considerations show that an injunction under I.R.C. § 7407 is appropriate in

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[24] *United States v. Raymond,* 228 F.3d 804, 813 (7th Cir. 2000), *cert. denied,* 533 U.S. 902 (2001); *Kaun,* 827 F.2d at 1149-50. *See also SEC v. Carriba Air, Inc.,* 681 F.2d 1318, 1322 (11th Cir. 1982) (action by SEC to enjoin alleged violations of securities laws).

[25] *Carriba Air,* 681 F.2d at 1322.

[26] Thurell decl. ¶ 14.

this case.

VI. Defendants Should Be Preliminarily Enjoined Under I.R.C. § 7408 Because they claimed Bogus Tax Credits Based on a Slavery Reparations Tax Credit Knowing That the Credit Has No Basis in Law and Would Thus Understate Tax Liability.

The United States may obtain an injunction under I.R.C. § 7408 if it shows that:

1. defendants engaged in any conduct subject to penalty under I.R.C. § 6700, which requires the United States to show:

    a. defendants organized or assisted in the organization of a plan or arrangement; or

    b. participated, directly or indirectly, in the sale of a plan or arrangement, and

    c. defendants made or furnished or caused another person to make or furnish (in connection with such sale or organization)–a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by participating in the plan or arrangement which the

    d. defendants knew or had reason to know is false or fraudulent as to any material matter; or

2. defendants engaged in any conduct subject to penalty under I.R.C. § 6701, which requires the United States to show:

    a. defendants aided or assisted in, procured, or advised with respect to the preparation or presentation of any portion of a return, affidavit, claim, or other document; and

    b. knew (or had reason to believe) that such portion would be used in connection with any material matter arising under the internal revenue laws; and

    c. knew that such portion (if so used) would result in an understatement of the liability for tax of another person; and

3. injunctive relief is appropriate to prevent recurrence of such conduct.

a. Defendants violated I.R.C. § 6700

The facts establish every one of the Section 6700 elements. James has admitted that he and NRIC employees and agents organized and participated in the sale of tax packages and membership packages that marketed false claims for tax credits on federal tax returns that defendants prepared. James conducted meetings at churches promoting and selling these tax packages. The "tax reparation packets" also have been marketed on the NRIC website at www.mynric.com, and by NRIC telemarketers. James knew or had reason to know that there is no such credit.

b. Defendants violated I.R.C. § 6701

The facts also establish every one of the Section 6701 elements. James admits that NRIC was in the business of preparing income-tax-returns with the fabricated slavery reparations tax credit. The tax returns prepared by defendants are used in connection with determining a taxpayer's tax liability–a material matter.

Knowledge of a potential understatement is required for imposition of a Section 6701 penalty.[27] That knowledge may be proved by inferences.[28] Morris James submitted a tax return of his own claiming a refund based on a slavery reparations claim. The IRS made no payment to James based on this claim, and James never pursued the matter further with the IRS. Additionally, James admits to knowledge of IRS statements regarding the unavailability of a tax benefit as reparations for slavery.

Quite simply, James and his company are preparing bogus returns with a fabricated tax

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[27] *Mattingly v. United States,* 924 F.2d 785, 791 (8th Cir. 1991).

[28] *See Nielsen v. United States,* 976 F.2d 951, 956 (5th Cir. 1992).

credit seeking money from the Government to which their customers are not entitled under the law. The IRS has issued three separate news releases since 1994 stating that the reparations argument is frivolous and will be denied.[29] All this evidence shows that defendants knew that there was no legal basis for the amounts claimed as credits on customers' tax returns. Consequently, defendants knew that their fabricated tax credits yielded tax understatements.

c. Injunctive relief is appropriate to prevent recurrence of such conduct.

As noted in the discussion of Section 7407, an injunction is appropriate relief in this case. To prevent defendants' illegal conduct, the Court should preliminarily enjoin them under I.R.C. § 7408.

VII. The United States Is Entitled to an Injunction under I.R.C. § 7402(a)

Section 7402(a) of the Internal Revenue Code authorizes injunctions "as may be necessary or appropriate for the enforcement of the internal revenue laws." This provision, in and of itself, authorizes the United States to seek an injunction against those who interfere with the enforcement of tax laws.[30] Section 7402(a), however, goes beyond merely codifying a district court's general equity power to grant injunctions. This provision gives the district courts a full range of powerful tools to ensure the enforcement of both the spirit and the letter of the internal revenue laws. As the First Circuit noted, "[i]t would be difficult to find language more clearly manifesting a congressional intention to provide the district courts with a full arsenal of powers

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[29] Thurell decl. ¶¶ 6-8.

[30] *United States v. Ernst & Whinney,* 735 F.2d 1296, 1300-01 (11th Cir. 1984), *cert. denied,* 470 U.S. 1050 (1985); *United States v. Franchi,* 756 F.Supp. 889, 890 (W.D. Pa. 1991) (citing legislative history).

to compel compliance with the internal revenue laws."[31]

Consistent with the statute's broad purpose, the federal courts have relied on Section 7402(a) to issue a broad range of injunctions where necessary or appropriate for the enforcement of the internal revenue laws. Injunctions have been issued under Section 7402(a) to enjoin a taxpayer's harassment of IRS agents,[32] to enjoin the promotion and sale of tax evasion trust plans,[33] and to enjoin the dissemination of tax-protest materials encouraging taxpayers to file improper tax returns.[34]

As shown above, defendants are interfering with the enforcement of the internal revenue laws and, thus, should be enjoined under Section 7402(a).

Section 7402(a) contains sufficient standards that a court need not consider traditional equitable factors that are applicable in non-statutory injunction cases.[35] In dictum, however, the Eleventh Circuit has said that traditional equitable factors should be considered in a Section 7402 injunction case.[36] Consideration of the traditional equity factors supports a Section 7402 injunction here.

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[31] *Brody v. United States,*243 F.2d 378, 384 (1st Cir.), *cert. denied,* 354 U.S. 923 (1957). *Accord Ernst & Whinney,* 735 F.2d at 1300.

[32] *United States v. Ekblad,* 732 F.2d 562 (7th Cir. 1984); *United States v. Hart,* 701 F.2d 749 (8th Cir. 1983).

[33] *United States v. Landsberger,* 692 F.2d 501 (8th Cir. 1982) (affirming district court order relying on both I.R.C. §§ 7407 and 7402(a)).

[34] *United States v. May,* 555 F. Supp. 1008 (E.D. Mich. 1983).

[35] *See* discussion of statutory injunctions at pp. 4-5, *supra.*

[36] *Ernst & Whinney,* 735 F.2d at 1301.

Traditional equitable factors supporting an injunction include: 1) substantial likelihood of success on the merits; 2) irreparable injury will be suffered unless the injunction issues; 3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause to the opposing party; and 4) if issued, the injunction will not be adverse to the public interest.[37]

a. Because no provision of the Internal Revenue Code authorizes defendants' fabricated tax credit, it is frivolous and the United States is likely to prevail on the merits.

The Internal Revenue Code does not provide a tax credit as reparations for slavery. Attempts by taxpayers to fabricate tax credits or to exempt themselves from the operation of the Internal Revenue Code are frivolous and are routinely rejected by the Courts.

b. The United States, as well as the public, suffers irreparable harm by defendants' preparation of bogus tax returns containing fabricated tax credits.

Defendants' activities create a substantial administrative burden on the IRS because the actions require IRS employees to devote substantial resources to attempting to locate and process the frivolous returns and other documents that defendants prepare, to take steps to prevent erroneous tax refunds, and to assess and collect proper tax liabilities and penalties.[38] Returns and amended returns and claims prepared by defendants deplete available tax-enforcement resources.[39] Moreover, defendants' activities expose their customers to the $500 frivolous return penalty under I.R.C. § 6702. In addition, the IRS may be unable to detect all frivolous returns and may issue erroneous refunds that are not recovered, thus resulting in a permanent loss of

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[37] *McDonald's Corp.*, 147 F.3d at 1306.

[38] Thurell decl. ¶¶ 14-18.

[39] *See United States v. Savoie*, 594 F.Supp. 678, 682 (D.C. La. 1984).

revenue to the United States.

c. Defendants will suffer no harm by the Court issuing the injunction and, therefore, the harm to the United States outweighs any potential harm to the defendants.

Defendants have no right to fabricate a tax credit as reparations for slavery. Injunctions requiring people to follow the law do not cause hardship.[40] Moreover, the only tax returns that defendants prepare are those with the fabricated tax credit for slavery reparations–defendants have no legitimate tax-preparation business. Accordingly, the harm to the Government outweighs any potential harm to defendants.

d. Consideration of the public interest favors the issuance of the injunction.

Defendants' activities expose customers to a frivolous return penalty under I.R.C. § 6702. In addition, the processing of frivolous returns containing defendants' fabricated tax credit requires resources that would otherwise be available for processing non-frivolous tax returns.[41] This slows the processing of tax claims for everyone who files a tax return, whether frivolous or not.[42] The scope of this problem is evident in the number of total frivolous returns and claims based on claims for reparations for slavery, segregation, or treatment as second-class citizens, black investment taxes, and other comparable grounds. Over 90,000 documents making such frivolous claims were filed with the IRS in 2001.[43] In fact, over half of all of the documents making frivolous claims filed with the IRS in 2001 were claims based on some sort of

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[40] *Dunlop v. Davis*, 524 F.2d 1278, 1281 (5th Cir. 1975).

[41] Thurell decl. ¶ 18.

[42] *Id.*

[43] *Id.* ¶ 11.

reparations argument.[44]

VIII. Conclusion.

Defendants' conduct in preparing and assisting in preparing frivolous returns is unlawful. Rather than forcing the Government to chase down every single frivolous filer after the fact, Congress has authorized the Government to obtain an injunction to stop the problem at the source. The United States is entitled to a preliminary injunction prohibiting defendants from continuing to promote a fabricated tax credit and from preparing or assisting in preparing returns. An injunction is warranted under three different Internal Revenue Code provisions. The Court should issue a preliminary injunction pending final disposition of this case.

Respectfully submitted,

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[44] *Id.* ¶¶ 11, 16.